

The Role Of Indian Judiciary In Development Of Principles On Narco Analysis And Polygraphy Test System

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A. Introduction

The utilization of narcoanalysis and polygraphy examinations has been a topic of judicial scrutiny and deliberation in India. The Indian judiciary has been instrumental in establishing the standards that govern the acceptability and utilization of these tests in judicial procedures. Article 20(3) of the Indian Constitution ensures the right to not incriminate oneself, stating that those accused of a crime cannot be forced to testify against them. Concerns were raised over the potential violation of this fundamental right due to the utilization of narcoanalysis, a technique involving the administration of truth serum medications. The matter of narcoanalysis and polygraphy tests has been subject to examination in several cases presented before Indian courts. The judiciary has occasionally stressed the necessity of striking a balance between investigative techniques and the protection of individual rights and privacy. The Supreme Court of India delivered a significant ruling in the matter of *Selvi v. State of Karnataka* (2010) about the acceptability of narcoanalysis, polygraphy, and the Brain Electrical Activation Profile (BEAP) tests. The court ruled that administering these tests to an individual without their agreement is a violation of the right to avoid self-incrimination. The courts have consistently emphasized the need of acquiring voluntary and well-informed permission from persons who undergo narcoanalysis and polygraphy examinations. If there is no voluntary permission, the outcomes of these tests may not be considered acceptable as evidence in a court of law. The admissibility of narcoanalysis and polygraphy test findings as evidence in court has come under investigation.

B. Investigation Process

The perpetrator in this case embezzled a substantial amount of Rs 594.88 crores. He was apprehended by the police and subjected to interrogation. Nevertheless, he refused to comply. Hence, the police sought to employ Polygraph, Narco Analysis, and Brain Mapping examinations. The defense claimed that it constitutes indirect physical torture, which is in violation of Article 20(3) of the Constitution. Nevertheless, the court permitted the tests on the basis that they considered these scientific procedures to be viable alternatives to third-degree approaches.

C. Right against Self- Incrimination Article 20(3) of Indian Constitution:

Conducting Narco-analysis, brain mapping, or lie detector tests against the accused without their agreement would be illegal, as stated in Article 20(3) of the Constitution. Article 20(3) of the Indian Constitution is the primary provision that regulates the process of criminal investigation and prosecution. The concept of the privilege against self-incrimination is being examined. The notion of protection from "self-incrimination" is a fundamental tenet in common law doctrine.

The safeguard is included in Article 20(3), which stipulates that individuals cannot be compelled to provide self-incriminating testimony following an accusation of a crime. In order to invoke Article 20(3) of the Indian Constitution, it is necessary for all three requirements to be fulfilled. Subjecting the accused to the test, as the investigating authorities in India have done, is widely regarded as a

blatant violation of Article 20(3). The primary concern surrounding the administration of the narco-analysis test pertains to both legal implications and potential violations of human rights.

In the case of *Bhaluka Behera and others v. State*, the accused individuals provided their thumb prints and signatures on March 23, when they were already listed as the accused. There is a concern regarding whether the assurance stated in Article 20(3) is applicable to the collection of the thumb and finger impressions of the accused. As per the applied expression, it is imperative that the accused is not compelled to provide testimony against himself. In the case of *M. P. Sharma v. Satish Chandra*, the Supreme Court was requested to provide a clear explanation of the meaning of the expression "to be a witness against himself" and determine its limitations. The principle of protection against compelled self-incrimination, a fundamental aspect of the British criminal justice system that is also adopted in both England and America, is unequivocally enshrined in Article 20(3). Furthermore, a few of our Indian judges recognized it. However, Article 20(3) now acknowledges it as one of the fundamental rights.

Nonetheless, the judges explicitly clarified in paragraph 10 of Jagannadhadas J.'s judgment that this ruling sets the precise boundaries for the definition of "being a witness," even in cases where the accused is obligated to provide potentially incriminating information to establish their guilt in court. Hence, it is clear that the defendant has the right to seek safeguard under the guarantee provided to him in Article 20(3) in the event that he is compelled to furnish his thumbprint. In the *Swarnalingam v. Assistant Labour Inspector* case, Chief Justice Rajamannar and Justice Rajagopala Ayyangar upheld the previous rulings, stating that the protection provided by Article 20(3) would apply to a procedure that necessitated the submission of documents that could reasonably substantiate an accusation. In the *Rajmuth Kolhi v. Periasami Nadar* case, a finger print case was brought before a sole judge of the Madras High Court. The defendant was directed to place his thumbprint at that location. Despite the accused's appeal, the trial judge disregarded his objection in accordance with Section 73 of the Indian Evidence Act and directed him to provide his thumbprint. In accordance with the aforementioned decision of the Supreme Court, Judge Somasudaram accepted the objection raised by the accused. The judge observed that the command to get the accused's thumb impression would amount to asking him to produce evidence, which is in violation of Article 20(3).

However, in the case of *M.C. Sekharan v. State of Kerala*, the Kerala High Court took a firm position against the practice, clearly saying that it infringes upon the fundamental human rights of an accused individual. Consequently, the judiciary's encounter with narco-analysis in the previous decade had been either uncertain or favorable. The courts may have perceived this practice as a reactionary measure to the prevailing threat to India's domestic security at that period. The investigators are currently doing a narrative analysis, even though the Indian courts have not yet accepted it as evidence. Narcotics analysis is seeing a growing utilization in India for the purpose of investigations, judicial actions, and laboratory work.

D. Right to Life & Personal Liberty Under Article 21 of Indian Constitution:

The term 'life' encompasses all the elements that contribute to the meaningfulness, wholeness, and value of a person's existence. An intriguing advancement in Indian Constitutional jurisprudence is the expanded interpretation of Article 21 by the Supreme Court in the post-Maneka period. The Supreme Court has declared that Article 21 constitutes the core of the Fundamental Rights. The expansion of the scope of Article 21 has been facilitated by attributing a broader interpretation to the terms 'life' and 'liberty' in Article 21. The interpretation of these two words in Article 21 should not be limited to a narrow scope. These phrases are organic and should be interpreted with clear and significant meaning. Following the landmark ruling in *Maneka Gandhi v. Union of India*, the meaning of Article 21 was significantly expanded to encompass some rights as basic rights. The

right to privacy is a legal right that has been developed by the Supreme Court of India and is implied in Article 21.

E. Narco-analysis test in the context of privacy

Instances when an individual is compelled to undergo compulsory medical tests or searches, as well as those where they are exposed to search and seizure, are the most directly relevant to the issue of the state encroaching upon an individual's right to private. The assessment of the right to privacy can be made based on Professor Tribe's statement: "The exclusion of unauthorized intrusions into privacy depends on the nature of the right being claimed and how it is invoked; it is at this stage that the context becomes crucial in order to provide meaningful judgment." To successfully undergo the narcoanalysis examination, an individual is administered a substance that, upon ingestion, hampers their capacity for imaginative thinking and impairs their ability to provide spontaneous responses to inquiries. It entails a direct violation of an individual's right to bodily autonomy in some manner.

The High Court has determined that the narco-analysis test must be conducted as a component of the inquiry in compliance with the Criminal Procedure Code. In the case of *Smt. Selvi v. State*, the Karnataka High Court deemed the argument that administering a drug into the body of the accused was distinct from obtaining a sample of their blood or semen as invalid. This aligns with the previous perspective. The second question pertains to specific occurrences and the procedure for authorizing the examination. As per Section 53, the examination can be conducted upon the request of a police officer holding the position of sub-inspector or above. Reports indicate that the criteria is frequently employed in cases involving heinous crimes that have had a profound effect on the societal structure of the nation, such as murder, or in instances of crimes aimed at deceiving the government. The test can be administered with the magistrate's authorization, which adds more credibility to the approach since it is an independent permission from a legal authority. Nevertheless, obtaining consent is not mandatory according to the legislation, and the test might be conducted without it. Consequently, the test is once again susceptible to abuse, and it is imperative to set laws to prevent inappropriate administration.

Subsequent decisions made by the Supreme Court expanded this assumption to such an extent that a fundamental entitlement to privacy was recognized. Mathew, J., stated that even in a hypothetical situation where a right to privacy was recognized under Article 21, it would be subject to conditions and not absolute. The individual in question, assuming without explicitly rejecting, acknowledged the potential existence of a fundamental entitlement to privacy. In addition, a panel of three judges presiding over the Gobind case was unable to overturn the majority verdict of the Supreme Court in the *Kharak Singh's Case*. The majority ruling in the case of *Kharak Singh v. State of U.P.* briefly acknowledged the existence of the right to privacy, so diminishing the argument that this right is non-existent. Consequently, the dissenting opinion of Subba Rao, J., in the case of *Kharak Singh v. State of Uttar Pradesh* erroneously established itself as the prevailing legal principle due to this case. Furthermore, it has been determined that the right to privacy encompasses two elements: the first being the enactment of regular privacy laws that allow for legal action in cases of violation, and the second being the constitutional safeguard provided by Article 21, which protects against encroachments by the government.

The issue of privacy was a subject of deliberation in the recent Supreme Court case of *Sharda v. Dharmpal*. The Supreme Court accurately construed prior judgments in the current matter, assessing whether a person involved in a divorce proceeding might be compelled to undergo a medical examination. The Court determined that the right to privacy is not unlimited and that an individual may be required to undergo a medical examination, although acknowledging the importance of

privacy and confidentiality. This judgment demonstrates that the right to privacy is subject to reasonable restrictions, similar to other fundamental rights.

In the case of *State of Punjab v. Mahinder Singh Chawla*, the Supreme Court has determined that the "right to life" includes the "right to health". Depriving an individual of their entitlement to healthcare will include exposing them to a perilous scientific experiment as a component of an exploratory therapy. Given the possible health hazards linked to the utilization of such medications, narco-analysis is an unsafe method of interrogation. The recent verdict of the High Court of Delhi in the Naz Foundation Case has significant importance, surpassing any other challenges related to search and surveillance. Section 377 of the Indian Penal Code, 1860 (IPC) is a legal provision that penalizes acts categorized as "unnatural offenses." These acts include voluntary carnal intercourse against the order of nature with a man, woman, or animal. The NGO Naz Foundation filed a public interest lawsuit challenging this provision. As to the court's understanding, this essentially makes any sexual activity other than heterosexual intercourse between a penis and a vagina illegal.

Furthermore, the Court determined that Sec. 377 contravened Article 14, which guarantees equality under the law, as well as its specific manifestation in Article 15, which prohibits discrimination based on sex. The study concluded that sexual orientation is comparable to sex and that discrimination based on sexual orientation is in violation of Article 15. While many fundamental rights solely apply to activities taken by the state, Article 15(2) introduces the concept of applying rights horizontally. Put simply, it also forbids one person from discriminating against another when it comes to accessing public areas. We believe that it is unacceptable to discriminate based on sexual orientation, especially while using the right protected by Article 15. *The Naz Foundation Case* expands the scope of privacy protection under the Indian Constitution to include matters beyond search and surveillance. According to the Delhi High Court, the right to privacy is seen as providing individuals with a personal realm where they can freely express and maintain their true identity. This interpretation is based on an examination of relevant Indian legal cases up to the present. This authority is employed in accordance with each individual's specific autonomy. Had the Indian Supreme Court adopted a similarly expansive approach, it may have potentially resulted in a concept akin to the German Constitutional Court's "right to informational self-determination." The chief minister of Jammu and Kashmir recently made reference to a rape victim during a session of the legislative assembly, but promptly issued an apology.

F. Narco-analysis test in the context Right To Health

According to several individuals, the entitlement to life include the entitlement to good health. The detrimental side effects of barbiturates employed in narco-analysis were raised as an argument in the case of *Rojo George v. Deputy Superintendent of Police* before the Kerala High Court. The High Court found it impractical due to the fact that patients are administered identical chemicals as pharmaceuticals, despite the potential side effects. Furthermore, diagnostic procedures like as X-rays and CT scans are employed to identify illnesses, despite the possibility of adverse consequences. The Court further referenced a research which indicated that medications administered during medical treatment are administered in higher quantities compared to those utilized in scientific experimentation. In order to prevent instances of police misconduct, excessive use of power, and unexpected errors, specific guidelines can be established regarding the requirements for conducting tests, the necessary safeguards that medical staff must adhere to while administering drugs to the suspect, and the appropriate tactics for interrogating the suspect while they are under the effect of a drug.

G. Conclusion

The Indian judiciary has played a crucial role in determining the admissibility of evidence obtained by Narco-analysis testing. The Indian Supreme Court, in the 2010 case of *Selvi case*, laid out

guidelines for the implementation of polygraph, brain mapping, and Narco-analysis tests. As per the court's decision, the individual cannot be compelled to do these tests while under coercion, and the results cannot be accepted as evidence. Nevertheless, the court authorized the utilization of the data obtained by Narco-analysis for further investigation.

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